

No. 13-1087 EC

¹ Statutory references are to the 2000 Revised Statutes of Missouri.

the MEC establishes facts Guettermann does not genuinely dispute and entitle the MEC to a favorable decision. Facts may be established by admissible evidence such as a stipulation, pleading of the adverse party, discovery response of the adverse party, affidavits, or any other evidence admissible under law. 1 CSR 15-3.446(6)(B). The MEC's motion is accompanied by documentary evidence, including authenticated business records of the MEC. Therefore, we make our findings of fact based on this admissible evidence, along with Guettermann's pleadings.

Findings of Fact

1. For nine years, Guettermann volunteered as a member and Vice Chairman of the Developmental Disabilities Resources Board of Clay County (the "DDR Board") until December 2012.

2. The DDR Board is a political subdivision of the state of Missouri. It operates a sheltered workshop in Clay County, Missouri, and at all relevant times had an annual operating budget exceeding one million dollars.

3. Since at least 2011, the DDR Board has not provided to the MEC a certified copy of an ordinance, order, or resolution passed pursuant to § 105.485.4 making public its own method of disclosing potential conflicts of interest and substantial interests of its officers and employees.

4. Guettermann filed financial interest statements with the MEC prior to the 2012 calendar year.

5. On November 13, 2012, the MEC received from the DDR Board a list of persons, including Guettermann, required to file a financial interest statement with the MEC for the 2012 calendar year.

6. The deadline for filing financial interest statement with the MEC for the 2012 calendar year was May 1, 2013.

7. The MEC sent Guettermann two letters, on January 28, 2013, and on March 15, 2013, advising him that if he believed he was not required to file a financial interest statement with the MEC, or believed his name was incorrectly submitted on the DDR Board's list, he should contact the DDR Board. The letters also advised Guettermann that he may contact the MEC with questions. Guettermann did not respond to either letter.

8. On May 3, and again on May 22, 2013, the MEC sent Guettermann letters advising that his financial interest statement had not been received by the deadline of May 1, 2013.

9. On May 28, 2013, Guettermann left a voicemail message with the MEC stating that he was a former member of the DDR Board. That same day, the MEC left a voice message for Guettermann stating he was required to file a financial interest statement on or before May 1, 2013, for the 2012 calendar year.

10. On May 29, Guettermann filed a financial interest statement electronically with the MEC for the 2012 calendar year.

11. May 29, 2013 was 28 days after May 1, 2013.

12. On June 4, 2013, the MEC sent Guettermann a letter assessing a late fee of \$280.00.

13. On June 13, 2013, Guettermann filed a complaint with this Commission to appeal the MEC's assessment of a late fee.

Conclusions of Law

We have jurisdiction of this matter. § 105.963.4. Our duty is to decide the issues that were before the MEC. *Geriatric Nursing Facility v. Department of Social Services*, 693 S.W.2d 206, 209 (Mo.App. W.D. 1985). We must follow the same law that the MEC must follow. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990). The MEC has the burden of proof. *Heidebur v. Parker*, 505 S.W.2d 440, 444 (Mo.App., St.L.D. 1974).

The MEC contends Guetterman is subject to late fees of \$280 for failing to timely file a personal financial statement as required by § 105.483, which provides, in pertinent part:

Each of the following persons shall be required to file a financial interest statement:

* * *

(11) Each elected official, candidate for elective office, the chief administrative officer, the chief purchasing officer and the general counsel, if employed full time, of each political subdivision with an annual operating budget in excess of one million dollars, and each official or employee of a political subdivision who is authorized by the governing body of the political subdivision to promulgate rules and regulations with the force of law or to vote on the adoption of rules and regulations with the force of law; unless the political subdivision adopts an ordinance, order or resolution pursuant to subsection 4 of section 105.485[.]

Guetterman does not dispute that his role as Vice Chairman of the DDR Board came within the requirements of § 105.483; he previously filed financial interest statements as a DDR Board member. Instead, Guetterman argues that he should not be subject to the late fee assessed by the MEC because he left the DDR Board in December 2012, and was not aware he was required to file a financial interest statement in 2013.

Individuals are presumed to know the law, and ignorance of the law is not an excuse for failing to follow it. *In re Estate of Pittman*, 16 S.W.3d 639, 643 (Mo. App., W.D. 2000). Regardless of whether he realized it, Guettermann's obligation to file a financial interest statement for the final year he served on the DDR Board could only be met in 2013.

Section 105.487(3) provides:

Every other person required by sections 105.483 to 105.492 to file a financial interest statement shall file the statement annually not later than the first day of May and the statement shall cover the calendar year ending the immediately preceding December thirty-first; provided that the governor, lieutenant governor, any member

of the general assembly or any member of the governing body of a political subdivision may supplement such person's financial interest statement to report additional interests acquired after December thirty-first of the covered year until the date of filing of the financial interest statement[.]

(Emphasis added.) When he left the DDR Board in December, 2012, Guettermann was responsible for filing an annual financial interest statement for the 2012 calendar year by no later than May 1, 2013. He failed to do so until May 29, 2013, when he filed the statement electronically, some 28 days after the deadline established by § 105.487(3).

The MEC is required to assess late fees pursuant to § 105.963.3, which provides:

The executive director [of the MEC] shall assess every person required to file a financial interest statement pursuant to sections 105.483 to 105.492 failing to file such a financial interest statement with the commission a late filing fee of ten dollars for each day after such statement is due to the commission[.]

We acknowledge Guettermann's frustration in having to pay late fees related to board service for which he volunteered his time, particularly when he left the DDR Board after nine years of service in December 2012. However, we cannot change the law to address his special circumstances, no matter how compelling they might be.

Because this Commission was created by state statutes, we have only such authority as the statutes give us. *State Bd. of Reg'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974). We do not have authority to add to or subtract from the terms of the statutes or to make an exception. *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985). Section 105.963.3 does not give the MEC or this Commission discretion to waive the late fee if a financial interest statement is not timely filed.

Summary

Guetterman is subject to the MEC's assessment of a late fee in the amount of \$280.00 for filing his financial interest statement 28 days after the May 1, 2013 deadline.

SO ORDERED on August 14, 2013.

\s\ Mary E. Nelson
MARY E. NELSON
Commissioner